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 15 TRANSPORTATION AUTHORITY and PHILLIP A. WASHINGTON

16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

18 BEVERLY HILLS UNIFIED SCHOOL  
 19 DISTRICT,

20 Plaintiff,

21 v.

22 FEDERAL TRANSIT  
 23 ADMINISTRATION, *et al.*,

24 Defendants.  
 25  
 26

**Case No. 2:18-cv-00716 GW(SSx)**  
*Related to Case Nos.*  
 2:12-cv-09861 GW(SSx)  
 2:16-cv-08390 GW(SSx)

**STIPULATED PROTECTIVE ORDER**

Judge George H. Wu

Action filed: January 26, 2018

1 Local Defendants Los Angeles County Metropolitan Transportation Authority and  
2 Phillip A. Washington (“Metro”), Plaintiff Beverly Hills Unified School District  
3 (“BHUSD” or “Plaintiff”), and Federal Defendants Federal Transit Administration, K.  
4 Jane Williams and Raymond Tellis (“FTA,” and collectively with Metro, “Defendants”),  
5 collectively referred to as “the Parties,” by and through their respective counsel, hereby  
6 agree and stipulate as follows:

7 **1. PURPOSES AND LIMITATIONS**

8 The Court has authorized Plaintiff to serve a negotiated set of Requests for  
9 Production of Documents (the “Requests”) on Defendants. Defendants’ production of  
10 documents in response to the Requests is likely to involve production of confidential,  
11 proprietary, or private information for which special protection from public disclosure  
12 and from use for any purpose other than prosecuting this litigation, may be warranted.  
13 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following  
14 Stipulated Protective Order. The Parties acknowledge that this Order does not confer  
15 blanket protections on all disclosures or responses to discovery and that the protection it  
16 affords from public disclosure and use extends only to the limited information or items  
17 that are entitled to confidential treatment under applicable legal principles. The Parties  
18 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
19 Order does not entitle them to file confidential information under seal; Civil Local Rule  
20 79-5 sets forth the procedures that must be followed and the standards that will be  
21 applied when a party seeks permission from the court to file material under seal.]

22 **2. GOOD CAUSE STATEMENT**

23 Certain documents produced in this case, including documents produced in  
24 response to the Requests, are likely to include information protected as confidential trade  
25 secrets, development, commercial, financial, technical and/or other proprietary  
26 information for which special protection from public disclosure and from use for any  
27 purpose other than litigation of this action is warranted.  
28

1 Confidential and proprietary materials and information consist of, among other  
2 things, confidential business or financial information, information regarding confidential  
3 business practices, or other confidential research, development, or commercial  
4 information (including information implicating privacy rights of third parties),  
5 information otherwise generally unavailable to the public, or which may be privileged or  
6 otherwise protected from disclosure under state or federal statutes, court rules, case  
7 decisions, or common law. Accordingly, to expedite the flow of information, to facilitate  
8 the prompt resolution of disputes over confidentiality of discovery materials, to  
9 adequately protect information the Parties are entitled to keep confidential, to ensure that  
10 the Parties are permitted reasonable necessary uses of such material in preparation for  
11 and in the conduct of trial or other merits hearing in this Action, to address their  
12 handling at the end of the litigation, and serve the ends of justice, a protective order for  
13 such information is justified in this matter. It is the intent of the Parties that information  
14 will not be designated as confidential for tactical reasons and that nothing be so  
15 designated without a good faith belief that it has been maintained in a confidential, non-  
16 public manner, and there is good cause why it should not be part of the public record of  
17 this case.

18 **3. DEFINITIONS**

19 3.1 Action: this pending lawsuit entitled *Beverly Hills Unified School District v.*  
20 *Federal Transit Administration et al.*, Case No. 2:18-cv-00716 GW(SSx), before the  
21 honorable Judge George H. Wu and any subsequent appeal of this Action.

22 3.2 “Confidential Information or Items”: information (regardless of how it is  
23 generated, stored or maintained) or tangible things that qualify for protection under  
24 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
25 Statement.

26 3.3 Counsel: Counsel for the Parties, as well as their support staff or contracted  
27 staff.  
28

1           3.4    Designating Party: a Party or Non-Party that designates information or  
2 items that it produces in response to discovery as “CONFIDENTIAL/SUBJECT TO  
3 PROTECTIVE ORDER.”

4           3.5    Disclosure or Discovery Material: all items or information, regardless of the  
5 medium or manner in which it is generated, stored, or maintained (including, among  
6 other things, testimony, transcripts, and tangible things), that are produced or generated  
7 in response to discovery in this matter.

8           3.6    Non-Party: any natural person, partnership, corporation, association, or  
9 other legal entity not named as a Party to this action.

10          3.7    Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and counsel (and their support staffs).

12          3.8    Producing Party: a Party or Non-Party that produces discovery material in  
13 this Action.

14          3.9    Professional Vendors: persons or entities that provide litigation support  
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
16 demonstrations, and organizing, storing, or retrieving data in any form or medium  
17 including hosting a document management database or eDiscovery software system) and  
18 their employees and subcontractors.

19          3.10 Protected Material: any discovery material that is designated as  
20 “CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.”

21          3.11 Receiving Party: a Party that receives discovery material from a Producing  
22 Party.

23 **4.    SCOPE**

24           The protections conferred by this Stipulation and Order cover not only Protected  
25 Material (as defined above), but also (1) any information copied or extracted from  
26 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
27 Material; and (3) any testimony, conversations, or presentations by Parties or their  
28 Counsel that might reveal Protected Material.

1 Any use of Protected Material at any trial before the judge shall be governed by  
2 the orders of the judge. This Order does not govern the use of Protected Material at any  
3 trial.

4 **5. DURATION**

5 Once this Action proceeds to a trial, all of the information designated as  
6 confidential and maintained pursuant to the protective order becomes public and will be  
7 presumptively available to all members of the public, including the press, unless  
8 compelling reasons supported by specific factual findings to proceed otherwise are made  
9 to the trial judge in advance of the trial. *See Kamakana v. City and County of Honolulu*,  
10 447 F.3d 1172, 1180 -81 (9th Cir. 2006) (distinguishing “good cause” showing for  
11 sealing documents produced in discovery from “compelling reasons” standard when  
12 merits related documents are part of the court records). Accordingly, the terms of this  
13 protective order do not extend beyond the commencement of a trial in this Action.

14 **6. DESIGNATING PROTECTED MATERIAL**

15 6.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under this  
17 Order must take care to limit any such designation to specific material that qualifies  
18 under the appropriate standards. The Designating Party must designate for protection  
19 only those parts of material, documents, items, or oral or written communications that  
20 qualify so that other portions of the material, documents, items, or communications for  
21 which protection is not warranted are not swept unjustifiably within the ambit of this  
22 Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
24 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
25 to unnecessarily encumber the case development process or to impose unnecessary  
26 expense and burdens on the other parties) may expose the Designating Party to  
27 sanctions. If it comes to a Designating Party’s attention that information or items that it  
28

1 designated for protection do not qualify for protection, that Designating Party must  
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3       6.2 Manner and Timing of Designations. Except as otherwise provided in this  
4 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
5 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
6 Order must be clearly so designated before the material is disclosed or produced.

7       Designation in conformity with this Order requires:

8           (a) for information in documentary form (e.g., paper or electronic  
9 documents, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), that the Producing Party affix at a minimum, the legend  
11 “CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER” to each page  
12 that contains protected material. If only a portion or portions of the  
13 material on a page qualifies for protection, the Producing Party also must  
14 clearly identify the protected portion(s) (e.g., by making appropriate  
15 markings in the margins).

16           (b) for testimony given in depositions that the Designating Party identify  
17 the Disclosure or Discovery Material on the record, before the close of the  
18 deposition all protected material.

19           (c) for information produced in some form other than documentary and  
20 for any other tangible items, that the Producing Party affix in a prominent  
21 place on the exterior of the container or containers in which the  
22 information is stored the legend “CONFIDENTIAL/SUBJECT TO  
23 PROTECTIVE ORDER.” If only a portion or portions of the information  
24 warrants protection, the Producing Party, to the extent practicable, shall  
25 identify the protected portion(s).

26       6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
27 failure to designate qualified information or items does not, standing alone, waive the  
28 Designating Party’s right to secure protection under this Order for such material. Upon

1 timely correction of a designation, the Receiving Party must make reasonable efforts to  
2 assure that the material is treated in accordance with the provisions of this Order.

3 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 7.1 Timing of Challenges. Any Party or Non-Party may challenge a  
5 designation of confidentiality at any time that is consistent with the Court's Scheduling  
6 Order.

7 7.2 Meet and Confer. The Challenging Party shall initiate the dispute  
8 resolution process under Local Rule 37.1 et seq., provided that this paragraph does not  
9 preclude challenging the designation of Confidential Information or Items on an ex  
10 parte basis if justified by the situation.

11 7.3 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
15 the protected material designation, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's  
17 designation until the Court rules on the challenge.

18 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 8.1 Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection with this Action  
21 only for prosecuting, defending, or attempting to settle this Action. Such Protected  
22 Material may be disclosed only to the categories of persons and under the conditions  
23 described in this Order. When the Action has been terminated, a Receiving Party must  
24 comply with the provisions of section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a  
26 location and in a secure manner that ensures that access is limited to the persons  
27 authorized under this Order.

28 8.2 Disclosure of "Confidential Information or Items". Unless otherwise

1 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
2 may disclose any information or item designated “CONFIDENTIAL/SUBJECT TO  
3 PROTECTIVE ORDER” only to:

4 (a) the Receiving Party’s Counsel, including but not limited to employees  
5 of said Counsel to whom it is reasonably necessary to disclose the  
6 information for this Action;

7 (b) the officers, directors, employees (including Counsel), consultants of  
8 the Receiving Party to whom disclosure is reasonably necessary for this  
9 Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this Action and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this Action and  
17 who have signed the “Acknowledgment and Agreement to Be Bound”  
18 (Exhibit A);

19 (g) the author or recipient of a document containing the information or a  
20 custodian or other person who otherwise possessed or knew the  
21 information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
23 Action to whom disclosure is reasonably necessary provided: (1) the  
24 deposing party requests that the witness sign the form attached as Exhibit  
25 A hereto; and (2) they will not be permitted to keep any confidential  
26 information. Pages of transcribed deposition testimony or exhibits to  
27 depositions that reveal Protected Material may be separately bound by the  
28 court reporter and may not be disclosed to anyone except as permitted



1 under this Stipulated Protective Order; and

2 (i) any mediator or settlement officer, and their supporting personnel,  
3 mutually agreed upon by any of the parties engaged in settlement  
4 discussions.

5 **9. PROTECTED MATERIAL SUBPOENAED OR OTHERWISE SUBJECT**  
6 **TO PRODUCTION OUTSIDE THIS LITIGATION**

7 Should any non-Party seek disclosure of Protected Material by way of a  
8 subpoena, a bona fide discovery request, or request pursuant to the federal or state  
9 Freedom of Information Acts (“Discovery Requests”) that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification  
11 shall include a copy of the Discovery Request;

12 (b) promptly notify in writing the party who made the Discovery Request  
13 that some or all of the material covered by the subpoena or order is subject  
14 to this Protective Order. Such notification shall include a copy of this  
15 Stipulated Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be  
17 pursued by the Designating Party whose Protected Material may be  
18 affected.

19 If the Designating Party timely seeks a protective order, the Party served with the  
20 subpoena or court order shall not produce any information designated in this action as  
21 “CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER” before a determination by  
22 the court from which the subpoena or order issued, unless the Party has obtained the  
23 Designating Party’s permission. The Designating Party shall bear the burden and  
24 expense of seeking protection in that court of its confidential material and nothing in  
25 these provisions should be construed as authorizing or encouraging a Receiving Party  
26 in this Action to disobey a lawful directive from another court. In the circumstances of  
27 a FOIA request, nothing in this Order shall prevent any Party from producing Protected  
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1 Information unless it is prohibited by the applicable law.

2 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
3 **PRODUCED IN THIS LITIGATION**

4 (a) The terms of this Order are applicable to information produced by a  
5 Non-Party in this Action, if any, and designated as  
6 “CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.” Such  
7 information produced by Non-Parties in connection with this litigation is  
8 protected by the remedies and relief provided by this Order. Nothing in  
9 these provisions should be construed as prohibiting a Non-Party from  
10 seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to  
12 produce a Non-Party’s confidential information in its possession, and the  
13 Party is subject to an agreement with the Non-Party not to produce the  
14 Non-Party’s confidential information, then the Party shall:

- 15 (1) promptly notify in writing the Requesting Party and the Non-  
16 Party that some or all of the information requested is subject to a  
17 confidentiality agreement with a Non-Party;  
18 (2) promptly provide the Non-Party with a copy of the Stipulated  
19 Protective Order in this Action, the relevant discovery request(s),  
20 and a reasonably specific description of the information  
21 requested; and  
22 (3) make the information requested available for inspection by the  
23 Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within  
25 14 days of receiving the notice and accompanying information, the  
26 Receiving Party may produce the Non-Party’s confidential information  
27 responsive to the discovery request. If the Non-Party timely seeks a  
28 protective order, the Receiving Party shall not produce any information in

1 its possession or control that is subject to the confidentiality agreement  
2 with the Non-Party before a determination by the court. Absent a court  
3 order to the contrary, the Non-Party shall bear the burden and expense of  
4 seeking protection in this court of its Protected Material.

5 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
7 Protected Material to any person or in any circumstance not authorized under this  
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
9 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
10 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
11 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
12 request such person or persons to execute the “Acknowledgment and Agreement to Be  
13 Bound” that is attached hereto as Exhibit A.

14 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain  
17 inadvertently produced material is subject to a claim of privilege or other protection,  
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
20 may be established in an e-discovery order that provides for production without prior  
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
22 Parties reach an agreement on the effect of disclosure of a communication or  
23 information covered by the attorney-client privilege or work product protection, the  
24 Parties may incorporate their agreement in the stipulated protective order submitted to  
25 the court.

26 **13. MISCELLANEOUS**

27 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
28

1 person to seek its modification by the Court in the future.

2       13.2 Right to Assert Other Objections. By stipulating to the entry of this  
3 Protective Order no Party waives any right it otherwise would have to object to  
4 disclosing or producing any information or item on any ground not addressed in this  
5 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground  
6 to use in evidence any of the material covered by this Protective Order.

7       13.3 Filing Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
9 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
10 Protected Material at issue. If a Party's request to file Protected Material under seal is  
11 denied by the court, then the Receiving Party may file the information in the public  
12 record unless otherwise instructed by the court.

13 **14. FINAL DISPOSITION**

14       After the final disposition of this Action, as defined in paragraph 3.1, within 60  
15 days of a written request by the Designating Party, each Receiving Party must return all  
16 Protected Material to the Producing Party or destroy such material. As used in this  
17 subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
18 summaries, and any other format reproducing or capturing any of the Protected  
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
20 must submit a written certification to the Producing Party (and, if not the same person  
21 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
22 category, where appropriate) all the Protected Material that was returned or destroyed  
23 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
24 compilations, summaries or any other format reproducing or capturing any of the  
25 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
28 work product, and consultant and expert work product, even if such materials contain

1 Protected Material. Any such archival copies that contain or constitute Protected  
2 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

3 15. Any violation of this Order may be punished by any and all appropriate measures  
4 including, without limitation, contempt proceedings and/or monetary sanctions.

5 16. All signatories listed, and on whose behalf the filing is submitted, concur in this  
6 stipulation's content and have authorized the filing.

7  
8 **IT IS HEREBY STIPULATED AND AGREED.**

9  
10 Dated: November 22, 2019

LOS ANGELES COUNTY COUNSEL  
MARY C. WICKHAM, County Counsel  
CHARLES M. SAFER, Assistant County Counsel  
RONALD W. STAMM, Principal Deputy

13  
14 REMY MOOSE MANLEY, LLP

15 /s/ Tiffany K. Wright  
16 TIFFANY K. WRIGHT

17 *Attorneys for Defendants*  
18 LOS ANGELES COUNTY METROPOLITAN  
19 TRANSPORTATION AUTHORITY and  
20 PHILLIP A. WASHINGTON

21 Dated: November 22, 2019

STROOCK & STROOCK & LAVAN LLP

22 /s/ Jennifer S. Recine  
23 JENNIFER S. RECINE

24 *Attorneys for Plaintiff*  
25 BEVERLY HILLS UNIFIED SCHOOL  
26 DISTRICT

27 ///

1 Dated: November 22, 2019

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
United States Department of Justice  
Environment & Natural Resources Division

2  
3  
4 /s/ Joshua P. Wilson  
5 JOSHUA P. WILSON  
6 Senior Attorney  
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8 OF COUNSEL, NANCY-ELLEN ZUSMAN  
9 Assistant Chief Counsel for Litigation  
10 and Regional Operations  
11 Federal Transit Administration

12 MARTIA FOX, Regional Counsel  
13 Federal Transit Administration, Region IX

*Attorneys for Federal Defendants*

14  
15  
16 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

17  
18 DATED: November 26, 2019

19  
20 

21 \_\_\_\_\_  
22 Honorable George H. Wu  
23 United States District Judge  
24  
25  
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Stipulated Protective Order that was  
7 issued by the United States District Court for the Central District of California on  
8 \_\_\_\_\_ [date] \_\_\_\_\_ in the case of \_\_\_\_\_ [**insert formal name of the case**  
9 **and the number and initials assigned to it by the court**]. I agree to comply with and to  
10 be bound by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and punishment in  
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any  
13 information or item that is subject to this Stipulated Protective Order to any person or  
14 entity except in strict compliance with the provisions of this Order. I further agree to  
15 submit to the jurisdiction of the United States District Court for the Central District of  
16 California for the purpose of enforcing the terms of this Stipulated Protective Order,  
17 even if such enforcement proceedings occur after termination of this action. I hereby  
18 appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and  
20 telephone number] as my California agent for service of process in connection with this  
21 action or any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25 Signature: \_\_\_\_\_